

REMARKS

This Amendment is in response to the Office Action mailed March 5, 2009. With this amendment the title is amended, claims 1, 16 and 31 are amended claims 5, 6, 20, 21, 34, 35 and 41–64 are cancelled, claims 65–88 are introduced and the remaining claims are unchanged. Reconsideration and withdrawal of the rejection are respectfully requested in view of the following remarks.

I. Amendments

Claims 1, 16 and 31 are amended to include the features of claims 5, 20 and 34 respectively. Claim 16 is amended to include the feature that the computer program product is disposed on a computer readable storage media. Claims 65–88 are introduced and are based in part on the features of original claims 1–40. No new matter is presented. Entry is respectfully requested.

II. Objection to the title

In item 2 of the Office Action the Examiner objected to the title. In this response the Applicant has amended the title to read “Active Probing for Sustainable Capacity Estimation of Networked Dataflows.” The Applicant believes that this title addresses the Examiner’s objection. Reconsideration and withdrawal of the objection are respectfully requested.

III. Rejections under §102

In the Office Action claims 1–4, 7–15, 16–19, 22–30, 31–33, and 36–64 were rejected under 35 U.S.C. §102(a) and (e) as being anticipated by Klassen et al., U.S. Patent Publication No. 2002/0080726 (herein after “Klassen”). The Applicant has reviewed the rejections and in view of the present amendments must respectfully

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disagree. Further the Applicant notes that in the rejection that claims 41–64 include features that are not present in claims 1–40 and therefore, should not be rejected for the same reasons as claims 1–40. However, as these claims are cancelled with this amendment the Applicant will not pursue this issue.

In the Office Action the Examiner indicated that claims 5, 6, 20, 21 34 and 35 would be allowable if written in independent form. In response the Applicant has amended claims 1, 16 and 31 to include the features of claims 5, 20 and 34 respectively. New claims 65–88 are introduced. The independent claims 65, 68 and 81 incorporate the features of claims 6, 21 and 35 respectively. Therefore, the Applicant believes that the rejections have been overcome as related to the cited references. Reconsideration and withdrawal of the rejection are respectfully requested.

IV. Rejections under §101

In the Office Action, the Examiner rejected claims 16–30 under 35 U.S.C. §101 as being unpatentable as being directed to non-statutory subject matter. In response the Applicant has amended the preamble of the claims to more clearly indicate that the Computer Program Product is disposed on a Computer Readable Storage Media. This language has been found to be statutory. See e.g. Ex parte Bo Li, Appeal 2008-1213 (BPAI 2008). Therefore, the Applicant believes that the rejection has been overcome. Reconsideration and withdrawal of the rejection are respectfully requested.

V. CONCLUSION

Accordingly, in view of the above amendment and remarks it is submitted that the claims are patentably distinct over the prior art and that all the rejections to the claims have been overcome. Reconsideration and allowance of the pending claims are

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respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

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If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed check please charge any deficiency to Deposit Account No. 50-0463.

Respectfully submitted,
Microsoft Corporation

Date: June 4, 2009

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I hereby certify that this correspondence is being electronically deposited with the USPTO via EFS-Web on the date shown below:

June 4, 2009
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/Rimma N. Oks/
Signature

Rimma N. Oks
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